IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10179 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHIR NIMESHKUMAR BABUBHAI

Versus

SOUTH GUJARAT UNIVERSITY

Appearance:

MR NK MAJMUDAR for Petitioner

MR DC DAVE for Respondent No. 1 & 2

NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 02/05/2000

ORAL JUDGEMENT

Rule, service of which is waived by learned advocate Mr D.C.Dave for the respondents. Upon request and considering the urgency, the matter is taken up for final hearing today.

In substance, the question surfaced, in this petition under Article 226 of the Constitution of India, revolves around, as to whether the Court of Law, and that too, of a Writ Court, exercising powers under Article 226, could be a collaborative or a party to break or make the law, to protect a person, who has failed to get the minimum required marks for eligibility criteria or entitlement for admission in MBA on the ground that the petitioner, a student, who belongs to Other Backward Community (hereinafter referred to as "OBC"), is entitled to be treated at par with the students belonging to Scheduled Caste and Scheduled Tribe for whom the minimum qualifying marks for MBA, is by concession reduced to 45 per cent or not, to which the reply, obviously, and positively ought to be in negative and, instantaneously, against the petitioner, for the reasons the Court would hasten to articulate, hereinbelow.

A few, skeleton, facts may be highlighted, at first, so as to appreciate the merits and challenge against the petition under Article 226 of the Constitution of India, wherein, the jurisdictional sweep and empowerment of the Writ Court is circumscribed, in a limited, permissible and also self-imposed narrow compass, as the yard-stick or the testing barometer on the anvil of justice is to see whether the impugned action, order or direction of the Authority is illegal, unjust, arbitrary, manifestly perverse, resulting into miscarriage of justice, so on and so forth?

The petitioner is a student of MBA semester I course and studying in Post Graduation Department of Business Management studies in respondent No.1, South Gujarat University, who has claimed to be a student belonging to OBC, who was granted provisional admission in the first semester of MBA of South Gujarat University on the ground that he will produce the mark sheet of his graduation examination for fulfilling the requisite criteria and permissible parameter of admission to the Post Graduate Department of South Gujarat University, which is, admittedly, fixed at minimum qualifying 50 per cent marks in the feeder degree of graduation examination, which the petitioner failed to submit till the date of the impugned order came to be recorded on 26th November, 1999 by the respondent University and by virtue of the impugned order, the petitioner was informed that he is not qualified and eligible to appear in the semester examination of MBA to be held in December 1999 and the admission, provisionally, granted conditionally, and upon a writing by the Department of South Gujarat University

has been cancelled. That is how, the petitioner challenging the impugned order has rushed to this Court knocking the doors of justice under the shelter of Article 226 of the Constitution of India, which is, undoubtedly, a special, plenary, prerogative, equitable, discretionary power of this Court.

Learned advocate for the petitioner has raised, in course of his submissions, before this Court, following contentions:

(1) That minimum qualifying percentage of mark fixed at 50 per cent for securing admission in MBA should be on the basis of aggregate marks.

(2) That the benefit of fixity of qualifying marks at 45 per cent in Graduate Degree in case of Scheduled Castes and Scheduled Tribes ought to be extended to students belonging to OBC also.

(3) Placing reliance on the Government Resolution dated 24.5.99, whereby, general minimum qualifying percentage of 55 in higher education course fixed for OBC for whom 27 per cent seats are reserved, has been reduced by 5 per cent and fixed at 50 percent and therefore, further concession of 5 per cent can be considered legal and legitimate in case of the petitioner as he is otherwise bright, brilliant and who has undergone study in the course of first semester of MBA examination after getting admission.

(4) Apart from his academic career, since he has been admitted and has undergone study for two terms of first semester of MBA in the Department of Post Graduate in South Gujarat University, he should be considered fit and eligible for examination and the impugned order should be revoked.

(5) That there is violation of principles of natural justice as the petitioner was not afforded with an opportunity of hearing before cancellation of admission.

The aforesaid submissions have been, seriously, countered by the learned advocate appearing for respondent Nos.1 & 2 and has raised following further submissions:

1. That reservation of certain seats and reduction of qualifying reduced concessional percentage of marks, like that, instead of 50 to 45 percent in

case of Scheduled Caste and Scheduled Tribes students criteria cannot be extended to students belonging to OBC in absence of any special or specific power or provision under the University Act or Rules or Regulations under the Act.

2. Reliance placed on Government Resolution dated 24.5.99 is, totally, unmeritorious. Further, reduction of qualifying marks even in case of OBC will not be permissible in absence of specific rule or law or regulations.

3. That mere attendance in two terms of first semester of MBA upon a provisional admission granted on not on fulfillment of requisite criteria but as the petitioner had applied for reassessment and revaluation of answer books by the time admission was sought and he failed to even intimate to the respondent University the marks after revaluation and reassessment and, therefore the resultant fact situation in such a case would never constitute a recognizable or cognizable right or empowerment.

4. That there was no question of giving any opportunity of hearing before passing the impugned order, as contended, since admission in first semester of post graduation in MBA of South Gujarat University was granted conditional and provisional upon the promise of producing revalued or reassessed marksheet as per the undertaking given by the student. It was, in this context, contended that there was no breach or violation of the principles of natural justice.

In the light of the factual scenario emerging from the record of the present case, following aspects may also be highlighted, which have remained incontrovertible and unimpeachable.

(1) The petitioner had submitted application for registration as post graduate student on 28.7.99 without producing the mark-sheet.

(2) The application for registration signed by the petitioner contained an unqualified undertaking which reads as under:

"I hereby undertake to abide by the Rules and Regulations of the College, the

University Department and University as may be prescribed from time to time and shall behave as a disciplined student of the University."

(3) The application for registration does not also contain the percentage of marks.

(4) The petitioner had, admittedly, not obtained minimum qualifying marks of 50 per cent even at the time of filing the form for registration for admission as he had applied for reassessment and revaluation of the answer books and he had given promise to produce the mark-sheet and the result of the revaluation as per the writing given by him and since he was hopeful and followed by his undertaking in view of the commencement of semester, provisional and conditional admission was granted by the South Gujarat University. The petitioner has not produced the mark sheet of his graduation examination in the faculty of Science even till date of passing the impugned order on 26th November,1999.

(5) The petitioner had submitted an application styled as mercy petition for continuance of MBA admission to 1999-2000 dated November 30,1999 which itself is self-eloquent and diametrically running counter to the submissions made in this petition.

(6) It is admitted by the petitioner in the application that he was given provisional admission to MBA in the academic year 1999-2000. Since he failed to obtain 50 percent marks in aggregate at B.Sc. degree, he requested the University that since the percentage acquired or obtained in the external i.e. University examination is more than 50 per cent, like that 51 per cent in B.Sc. examination, which is the feeder course, he should be permitted to continue in the MBA course and to appear in the examination, and that he had applied for reassessment and considering the possibility that deficiency will be covered as he has, fairly, well case at the annual examination, and result upon assessment did not change and he continued to suffer deficiency in aggregate marks required for admission and appealed to the University that the deficiency of two per cent marks in the internal examination was due to excessive stress

and mental disturbances as his mother was suffering from cancer. In short, the petitioner had, by this application appealed to the heart of the University realising well that appeal to the head in terms of rules and regulations would be fruitless. Humanitarian consideration was put forward for continuance in MBA course and subsequent examination which, also, came to be rejected.

In so far as the first submission raised on behalf of the petitioner is concerned, it is not supported by the facts which are admitted. The contention that qualifying marks of 50 per cent for admission should be considered overall like that, internal plus external, is, totally, meritless. It may be mentioned that he secured 85 marks out of 210 in so far as internal examination is concerned which comes around 40 per cent, whereas, he secured 248 marks out of 490 in the external, like that, University examination, which comes to 51 per cent. Therefore, it is very clear that the petitioner obtained 333 marks out of 700 and in aggregate he secured 427 marks out of 900 which comes 47.44 per cent. Therefore, the submission that aggregate marks should have been considered for the purpose of qualifying minimum marks for admission is also of no avail. Even the alternative submission that aggregate marks of external examination taken by the University should be the criteria and basis is considered, then also, the petitioner is not in a position to make any capital out of it as this alternative submission is not supported by any rule provisions. There is no sanction behind it. In fact, such a submission is de-hors the provisions of the University Act and the rules and regulations made thereunder by the South Gujarat University. The first submission, therefore, is without any substance and is required to be rejected. Accordingly, it is rejected.

Next it would lead to consideration of the second contention that the analogous benefit of concession by reducing 5 per cent more marks in the light of Government Resolution dated 24.5.99 should be considered and given to the petitioner, who has undergone two terms of the first semester of MBA. This submission is, undoubtedly, meritless. The resolution relied on is in connection with further benefit given to OBC students in higher education by reducing minimum qualifying marks for such admissions for such students from 55 per cent to 50 per cent by reducing 5 per cent marks. Even that too, in aggregate like that, from total marks. This Court is unable to comprehend as to how such a submission can be

accepted. It is by virtue of the policy of the Government additional benefit came to be conferred in fixing the minimum qualifying marks for higher education and technical education for the students belonging to OBC from 55 per cent to 50 per cent and under what source of power this Court should reduce the percentage of 50 to 45 has remained, totally, unexplained, unclarified and in dark. Such a submission not only militates the spirit and design of the resolution sought to be relied on, but also invokes the creation of a separate class at the hands of the Court in exercise of its power under Article 226 of the Constitution of India in a policy domain which, exclusively, belongs to the Government and not judiciary. The second contention is, therefore, baseless, meritless and is required to be rejected. Accordingly, the said contention is also rejected.

The next contention is with regard to want of or violation of principles of natural justice. Prima facie, such a contention may appear to be very alluring and subtle, but not, really, sound and sustainable when one gets into the reality of the facts and circumstances emerging from the record of the present case. Needless to mention that upon the writing given by the petitioner, if not undertaking, as stated by the learned advocate for the petitioner, provisional and conditional admission was grated with an opportunity to the petitioner to produce the marksheet, showing that the minimum qualifying marks for admission in the first semester of MBA which is, admittedly, fixed at 50 per cent since the petitioner had already moved the University authority for revaluation and reassessment of answer books. The petitioner has also given and unqualified undertaking in the form of registration despite the failure to produce the mark sheet as undertaken by him and to abide by the rules and regulations of the University, the petitioner has raised the submission that the cancellation of the provisional and conditional admission without giving him an opportunity of hearing is illegal and bad in law. What a travesty of justice ! What a mockery of undertaking ! Be that as it may. The domain of principles of natural justice has variety of seeds. It can not be separated from the factual context of a given case. No doubt, in the event of any successful spelling out of violation or infraction of the basic tenets of doctrine of "audi alterem partem", it will be first action and duty on the part of the Court even while exercising its powers under Article 226 to come to the rescue of the victim of injustice or a person visited with civil and evil consequences in absence of principles of natural justice. Nonetheless, the extent, quality, degree, intensity and

the utility of the principles of natural justice differ from forum to forum, case to case depending upon the inherent requirement emerging from the factual situation. In the present case, it cannot be contended, even for a moment that the right of hearing or, in other words, the principles of natural justice could be pressed into service as there was no crystallized final right established or acquired in favour of the petitioner. A person getting into University education and, that too, Post Graduate level,upon an undertaking or even upon a promise that after reassessment and revaluation of the answerbooks, marksheet shall be produced and in the event of the successful revaluation, the deficiency of 2.5 per cent marks out of the total marks, the final admission will be considered and upon such a promise if provisional and conditional admission is granted to the petitioner, who instead of submitting the revalued marksheet where he has failed to secure the required percentage, turns round and contends with the help of celebrated principles of "audi alterem partem", could never be allowed to contend such a plea in the peculiar fact situation of the case. It is, therefore, not only inexpedient but, totally, misconceived submission raised on behalf of the petitioner and it has to be thrown overboard which is done hereby. Obviously, it will take to the consideration of the last submission, which is aimed at rather to heart, than to the head. It pertains to mercy domain rather than the right dominated, in which it has been contended that the petitioner who has undergone study after provisional admission in the first semester of MBA post graduation of South Gujarat University for two terms upon admission and who is a bright and brilliant (?) student belonging to OBC category will lose a precious academic year, which, in all probability result into great hardship and monetary loss in his career and therefore, also sympathy and mercy should be shown and he should be helped by this Court with the aid of Article 226 of the Constitution in continuing the course so that he may become master of business administration. This submission, apart from being, totally, unsound, illogical, leads to illegal conclusion and de hors the provisions of the Act and the rules and Regulations made thereunder. It is, totally, sans substance and deserves to be rejected. In all probability, this submission appears to have been made as a last resort, as a drowning man will always try to catch a straw. Be that as it may, this contention is unmeritorious and has no logic or legality. It is, therefore, rejected.

In support of the merits of the petition and the

submissions made, reliance is placed on a decision of the Hon'ble Supreme Court in the case of K.C.Vasanth Kumar v. State of Karnataka, AIR 1985 SC 1495. After having gone through the ratio laid down by the Hon'ble Supreme Court in the said decision, this Court is at a great loss to comprehend as to how it can be pressed into service in the fact situation of the present case. In the said decision guidance and directions are issued with regard to the question of constituting a commission in identifying the castes or communities of other backward class, like that, economically and educationally backward classes. This decision does not at all help the petitioner insofar as the merits of the present petition are concerned.

As against that learned advocate for the respondent University has placed reliance on following decisions:

1. Indra Sawhney vs. Union of India, 2000 (1) SCC 168.

2. Ajit Singh III v. State of Punjab, 2000 (1) SCC 430.

3. A.P.M.E. Society v. Govt. of A.P., AIR 1986 SC 1490.

As far as the first decision is concerned, the question was pertaining to identification of creamy layer out of other backward communities. In the second decision also, the question was of identification of OBC persons and criteria to be adopted, whereas, in the third decision relied on it has been, clearly, propounded that merely because a student gets admission, who is otherwise ineligible, unqualified, he cannot be permitted to seek writ redressal under Article 226 even if he has undergone studies. Not only that, it is also, clearly, laid down in the said decision that in the domain of academics and more so in case of eligibility criteria prescribed for admission for higher education, there would not arise any question of mercy, sympathy or leniency. The Court entertaining a petition under Article 226 cannot be addressed or allowed to consider mercy or sympathy for a petitioner who has secured or who is otherwise disqualified or ineligible and has obtained admission on a particular course cannot be allowed to urge the Court to help him as it would tantamount to lending a helping hand in breaking the law, rules and regulations.

After having taken into consideration the overall factual situation and the relevant legal settings discussed and

enumerated hereinabove, this Court has no hesitation in finding that this petition under Article 226 is absolutely meritless and is required to be rejected with the observations that it will be open for the University to take appropriate available, permissible action or course for apparent indulgence in undesirable conduct in producing confidential papers from the record of the University which are, otherwise, also not relevant as borne out from the affidavit in reply of respondent No.1, which has remained uncontroverted, unchallenged as no explanation has been tendered on record of the present petition as to what was the source, mode and modality which helped the petitioner to take out confidential documents from the record of the University and how they came to be produced though, irrelevant, in support of the so called merits of this petition. Liberty to University to appropriately deal with it if so desired.

With the above observations, this petition is dismissed. In the circumstances without any costs.

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(vjn)